

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-02/11-86
)
 Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Disabilities, Aging, and Independent Living (DAIL) terminating his services funded through the Choices for Care (CFC) program. The issue is whether DAIL has shown by a preponderance of the evidence that petitioner is no longer eligible for the CFC program.

The petitioner filed for fair hearing on February 11, 2011. Petitioner is receiving continuing benefits pending appeal. A telephone status conference was held on March 8, 2011 and the matter scheduled for hearing on April 12, 2011. Petitioner was hospitalized at the beginning of April 2011 due to fluid in his lungs and the hearing was continued. A series of telephone status conferences occurred and the hearing officer requested DAIL to reassess petitioner. DAIL reassessed petitioner on July 5, 2011. DAIL determined that petitioner remained ineligible for the CFC program. The matter was reset for hearing on August 18, 2011. Upon

petitioner's request, the hearing was rescheduled and the case heard on September 20, 2011.

The decision is based upon the testimony and exhibits admitted at hearing. DAIL offered testimony from (1) B.S., the long-term care clinical coordinator (LTCCC) employed by DAIL and (2) S.M., petitioner's case manager from the local area agency on aging. Petitioner testified on his behalf.

Exhibits admitted at hearing include:

1. VT DAIL CFC Clinical assessment dated July 16, 2009
2. VT DAIL LTCCC Utilization Review dated October 18, 2010
3. CFC Notice of Termination dated November 12, 2010
4. VT DAIL CFC Clinical dated July 5, 2011
5. VT DAIL Full Independent Living Assessment (ILA) dated October 6, 2010

FINDINGS OF FACT

1. The petitioner is a fifty-five-year-old man who receives Social Security Disability. He uses a cane or a motorized scooter for ambulation. His primary diagnoses are arthritis, chronic obstructive pulmonary disorder (COPD), and diabetes. The petitioner also is anxious and depressed and has other medical problems.

2. During July 2009, petitioner was hospitalized for one week and discharged to a nursing home for rehabilitation. The nursing home referred petitioner's case to DAIL for a CFC assessment.

3. B.S. is a Long-Term Clinical Care Coordinator with DAIL. She is a registered nurse and a physician's assistant. She initially assessed petitioner for the CFC program on or about July 16, 2009.

4. It was not clear whether the petitioner left the nursing home against medical advice. The parties agree that petitioner was very weak when he was first assessed for the CFC program.

5. In the July 16, 2009 assessment, B.S. found that petitioner needed extensive assistance with the following Activities of Daily Living (ADLs): toileting, bed mobility, transferring, bathing, and dressing. Petitioner was receiving occupational and physical therapy.

6. Extensive assistance is defined as weight-bearing assistance or full care-taker assistance.

7. Petitioner was found eligible for the highest needs CFC program.

8. CFC recipients are assessed annually to determine their continuing eligibility for CFC services.

9. S.M. is petitioner's CFC case manager; she is employed by the local area agency on aging. Petitioner also receives services through the local home health agency. S.M. and a nurse from the local home health agency completed the Independent Living Assessment (ILA) for petitioner's reassessment on October 6, 2010. The information on the ILA is based upon petitioner's information to the assessors and what the assessors observed when they met with petitioner.

10. S.M. found significant improvement in petitioner's ability to meet his ADLs. S.M. found the following information:

a. Dressing. Petitioner needs supervision. Petitioner needs assistance with socks and shoes. He has assistive devices to help him. At times, he needs help with his pants.

b. Bathing. Petitioner needs limited assistance getting into and out of the bathtub.

c. Bed Mobility. Petitioner uses a recliner for sleeping. He can get into and out of the recliner on his own.

d. Toileting. Independent. Petitioner does his own toileting.

e. Transferring. Independent. Petitioner can get into and out of chairs, etc. on his own.

11. B.S. reviewed the October 6, 2010 ILA on October 18, 2010. Based on her review, B.S. found that the petitioner no longer needed nursing home level care.

12. DAIL sent petitioner a Notice of Termination dated November 12, 2010. Petitioner followed through on his right to appeal.

13. During the pendency of this appeal, petitioner was hospitalized for three days in April 2011. B.S. reassessed petitioner on July 5, 2011. DAIL did not find that petitioner needed nursing home level care.

14. Petitioner testified on his behalf. He agreed that in July 2009 he was unable to do anything. Petitioner believes he should still receive CFC services. Petitioner wants help getting into and out of the bathtub when he bathes and he wants help with his housekeeping and laundry.

ORDER

DAIL's decision is affirmed.

REASONS

The Choices for Care (CFC) program is a Medicaid waiver program that allows individuals who need nursing home level of care the means to choose whether to remain in their own home, a community setting, or enter a nursing home.

The general policy of the CFC program "shall be based on person-centered planning, and shall be designed to ensure quality and to protect the health and welfare of the

individuals receiving services.” CFC 1115 Long-term Care Medicaid Waiver Regulations (CFC Regulations) Section I.A. As a result, each individual’s case turns on information specific to the individual.

Once an individual is eligible, the individual is reassessed on a regular basis. CFC Regulations Sec. VII.B. If DAIL decides to terminate CFC assistance based on a reassessment, DAIL bears the burden of proof in justifying the termination of assistance.

Petitioner was found eligible for highest needs during 2009 because he needed extensive assistance with several of his ADLs.

The eligibility criteria regarding assistance with functional needs are instructive; the pertinent regulation states:

IV.B.1 Highest Needs Group

b. Individuals who apply and meet any of the following eligibility criteria shall be eligible for and enrolled in the Highest Needs group:

- i. Individuals who require extensive or total assistance with at least one of the following Activities of Daily Living (ADLs): toilet use, eating, bed mobility; or transfer, and require at least limited assistance with any other ADL.

When petitioner was reassessed during October 2010, he had sufficiently improved that he no longer needed extensive

assistance with toilet use, bed mobility or transferring. He was able to do his toileting, bed mobility and transferring independently. He never needed assistance with eating. As a result, DAIL was correct when they determined he was no longer eligible for the CFC highest needs program.

Petitioner is advised to apply for other programs that provide the homemaker services he seeks and/or provide the limited assistance he needs with bathing.¹

Based on the above, DAIL's decision is affirmed. 3
V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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¹At the close of the hearing, arrangements were made for petitioner to meet then with his case manager to pursue other options.